

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

Stephen M. Charne
Tara S. Sinha
WITMAN STADTMAUER, P.A.
26 Columbia Turnpike
Florham Park, New Jersey 07932-2213
(973) 822-0220

John M. Agnello
Melissa E. Flax
CARELLA, BYRNE, CECCHI,
OLSTEIN, BRODY & AGNELLO, P.C.
5 Becker Farm Road
Roseland, New Jersey 07068
(973) 994-1700

Attorneys for Plaintiffs

DR. FADI CHAABAN, DR. SABINO R.
TORRE, DR. CONSTANTINOS A.
COSTEAS, AND DR. ANTHONY J.
CASELLA as Trustees of Diagnostic &
Clinical Cardiology, P.A. Profit Sharing Plan,

Plaintiffs,

v.

DR. MARIO A. CRISCITO,

Defendant.

Case No. 2:08-cv-01567 (GEB/MCA)

**PLAINTIFFS' RULE 56.1
SUPPLEMENTAL STATEMENT OF
DISPUTED MATERIAL FACTS IN
OPPOSITION TO DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**

Pursuant to Rule 56.1(a) of the Local Civil Rules of the United States District Court for the District of New Jersey, Plaintiffs Dr. Fadi Chaaban, Dr. Sabino R. Torre, Dr. Constantinos A. Costeas, and Dr. Anthony J. Casella, as Trustees of Diagnostic & Clinical Cardiology, P.A. Profit Sharing Plan, hereby submit this Supplemental Statement

of Disputed Facts in opposition to Defendant, Dr. Mario A. Criscito's motion for summary judgment, as follows:

1. Plaintiff Dr. Anthony J. Casella's ("Casella") responsibility for handling the day to day financial aspects of Diagnostic & Clinical Cardiology, P.A.'s ("DCC") medical practice was dramatically reduced when new officers of DCC were elected in 2006. *See* Declaration of Anthony J. Casella in Opposition to Defendant's Motion for Summary Judgment ("Casella Opp. Decl."), ¶3.

2. Casella reported DCC employee salary and demographic information to APC from approximately 1993 to 2007. In 2007, Mark Brown, DCC's Administrator, assumed responsibility for reporting DCC employee salary and demographic information to APC. The reporting of the employee salary and demographic information was Casella's only involvement with APC (other than with respect to his individual account) until Criscito was removed as sole Trustee in July of 2007. *See* Casella Opp. Decl., ¶4.

3. As of September 30, 2010, the Smith Barney account had an account value of \$771,846.06. *See* Casella Opp. Decl., ¶5.

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4. Criscito advised APC that all of the money in the commingled account (which included the Smith Barney account) was rolled over to his personal IRA as reflected in the 2005 IRS Form 1099-R prepared by APC for Criscito. *See* Declaration of Melissa E. Flax in Opposition to Defendant's Motion for Summary Judgment, Ex. 5; Declaration of Melissa E. Flax in Support of Plaintiffs' Motion for Summary Judgment Ex. 68, p.25010; Ex. 69.

Dated: October 20, 2010

Respectfully submitted,

Stephen M. Charme
Tara S. Sinha
WITMAN STADTMAUER, P.A.
26 Columbia Turnpike
Florham Park, New Jersey 07932-2213
(973) 822-0220

By: /s/ Stephen M. Charme
Stephen M. Charme

John M. Agnello
Melissa E. Flax
CARELLA, BYRNE, CECCHI,
OLSTEIN, BRODY & AGNELLO, P.C.
5 Becker Farm Road
Roseland, New Jersey 07068
(973) 994-1700

By: /s/ John M. Agnello
John M. Agnello

Attorneys for Plaintiffs